

Message Text

PAGE 01 STATE 049728

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FM SECSTATE WASHDC

TO AMEMBASSY LUSAKA PRIORITY

C O N F I D E N T I A L STATE 049728

EXDIS

E.O.: 11652, GDS

TAG : EIND, ZA

SUBJECT: TAW

REF: (A) LUSAKA 354 (B) LUSAKA 353
(C) STATE 174339, AUG. 31, 1973

1. DEPARTMENT/OPIC APPRECIATE PROMPT AND COMPREHENSIVE EMBASSY REPORTING.
2. DEPT. CONCURS IN EMBASSY APPROACH (REF B, PARA 7) OF NOTING OUR INTEREST IN OUTCOME OF TAW/GRZ DISPUTE ECAUSE OF OPIC AND EXIM INVOLVEMENT. BEYOND THIS, DEPT. BELIEVES THAT:

--USG SHOULD MAINTAIN LOW PROFILE,

--DISPUTE IS PRIMARILY COMMERCIAL AT THIS JUNCTURE,
INVOLVING APPARENTLY DIVERGENT VIEWS ON PART OF GRZ AND
TAW ON VALIDITY OF LEASE,

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PAGE 02 STATE 049728

--TAW/GRZ DIFFERENCES SHOULD REMAIN IN COMMERCIAL DISPUTE
ARENA UNDER PRESENT CIRCUMSTANCES, AND NOT EXPAND INTO
WIDER FRAMEUORK WHICH COULD ADVERSELY AFFECT OUR OVERALL
RELATIONS WITH GRZ, ESPECIALLY IN VIEW OF OUR OTHER

ECONOMIC AND INVESTMENT INTERESTS IN ZAMBIA.

CONSISTENT WITH THIS POLICY, IF QUERIED, EMBASSY MIGHT CONVEY USG HOPE THAT DISPUTE WILL BE RESOLVED AS COMMERCIAL DISPUTE.

3. ON MARCH 7, 1974, TAW, REPRESENTED BY WOOD, SAVAGE, SEBASTIAN ZULU AND ALAN DYNNER (U.S. COUNSEL) MET WITH OPIC, EXIM, CHASE MANHATTAN BANK AND FIRST NATIONAL BANK OF CHICAGO; ON MARCH 8, 1974, TAW MET WITH REPRESENTATIVES OF GM, RYDER, FRUEHAUF AND OPIC. TAW CALLED THE MEETING TO EXPLAIN TO CREDITORS AND SUPPLIERS TAW'S VIEW OF LEASE CANCELLATION AND TO DESCRIBE TAW'S PROPOSED APPROACH TO GRZ. TAW ASKED OPIC, LENDERS, AND SUPPLIERS (AND THEY AGREED FOR THE PRESENT) NOT TO TAKE ANY ACTION AT THIS TIME IN ORDER TO PERMIT TAW TO HAVE DISCUSSIONS WITH THE GRZ. OPIC UNDERSTANDS THAT SAVAGE, ZULU AND MEMBER OF DYNNER'S LAW FIRM, BRIGATTI, LEFT NEW YORK FOR LUSAKA ON MARCH 8 OR 9. THEY HAVE REQUESTED MEETINGS DURING WEEK OF MARCH 11 WITH REPRESENTATIVES OF MINISTRY FOR LEGAL AFFAIRS AND OTHER RELEVANT MINISTRIES TO DISCUSS LEASE AND TO INFORM GRZ OF TAW'S THINKING. TAW EXPECTS INTERNAL GRZ DISCUSSIONS TO FOLLOW MEETING BETWEEN TAW AND GRZ, AND THAT GRZ WILL RESPOND OFFICIALLY (POSSIBLY AT PRESIDENTIAL LEVEL) BY END OF MARCH.

4. TAW BELIEVES THAT (A) GRZ HAS NO LEGAL BASIS FOR CANCELLING LEASE, (B) GRZ IS LIABLE TO TAW FOR SUBSTANTIAL DAMAGES IF LEASE IS NOT REINSTATED, AND (C) GRZ TOOK DECISION TO CANCEL WITHOUT THOROUGH ANALYSIS OF LEASE AND HENCE OF CONSEQUENCES OF CANCELLATION. TAW IS EXPECTED TO TAKE POSITION THAT LEASE DOES NOT PERMIT CANCELLATION. (FYI ONLY. TAW LEASE IS "FULL PAYOUT" LEASE, WHICH MEANS THAT TOTAL RENTALS (OVER 24 OR 36 MONTH PERIOD) COVER FULL COST OF EQUIPMENT PLUS FINANCING CHARGES. GENERALLY, FULL PAYOUT LEASES (AS OPPOSED TO NON-FULL PAYOUT LEASES) ARE NON-CANCELLABLE, AND GIVE THE LESSEE AN OPTION
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PAGE 03 STATE 049728

AT END OF LEASE TO PURCHASE EQUIPMENT. FROM THIS STAND-POINT, TAW'S LEASE WITH GRZ, AND ALL TAW LEASES, ARE "NORMAL" FULL PAYOUT LEASES. HOWEVER ABOVE COMMENTARY DOES NOT SPEAK TO COMPLICATED LEGAL QUESTIONS INVOLVED IN GRZ ACTION. OPIC IS TAKING NO POSITION RE LEGAL ARGUMENTS; THIS IS SOLELY MATTER BETWEEN TAW LAWYERS AND GRZ. END FYI).

5. TAW WILL ALSO ARGUE THAT GRZ COURSE OF CONDUCT DURING PERIOD SEPT. 1, 1973 TO FEB. 19, 1974 HAS EFFECT OF WAIVING DELIVERY DATE AND BARRING GRZ FROM REPUDIATING LEASE. THIS COURSE OF CONDUCT WAS NOT DESCRIBED IN DETAIL TO LENDERS, BUT APPROACH DOES INCLUDE USING JANUARY 28,

1974 LETTER OF ACCEPTANCE EXECUTED BY GRZ AND TAW (OPIC

HAS COPY) ACCEPTING UNDER LEASE 27 UNITS OWNED BY TAW-LIBERIA AND SHIPPED TO ZAMBIA FROM WEST AFRICA. TAW PLACES CONSIDERABLE RELIANCE ON LETTER OF ACCEPTANCE.

6. OF CONCERN TO OPIC, EXIM AND OTHER LENDERS AND SUPPLIERS, IS FACT THAT TAW DOES NOT PROPOSE TO PLACE SUBSTANTIAL RELIANCE, AND POSSIBLY WILL PLACE NO RELIANCE, ON OCTOBER 22, 1973 AND JANUARY 11, 1974 LETTERS EXECUTED ON BEHALF OF THE GRZ BY SIWO IN WHICH THE GRZ AGREES TO ACCEPT TRUCKS WHEN DELIVERED. TAW'S POSITION IS THAT BROAD-BASED CASE WILL BE MORE EFFECTIVE. DEPT. WONDERS, HOWEVER IF CIRCUMSTANCES UNDER WHICH TAW ACQUIRED LETTERS HAVE ANY BEARING ON TAW'S UNWILLINGNESS TO RELY ON THEM IN PRESENTING TAW'S CASE TO GRZ. SOMEWHAT DISTURBING IS POSSIBLE EXPLANATION (REF A, PARA 2) THAT WOOD MIGHT HAVE ARRANGED WITH SIWO THAT LATTER SIGN UNAUTHORIZED LETTER GRANTING LEASE EXTENSION. TAW DID USE THIS LETTER IN U.S. TO DEMONSTRATE TO U.S. CREDITORS THAT IT HAD AUTHENTIC LEASE EXTENSION.

7. AN ALTERNATIVE EXPLANATION IS THAT SIWO WAS AUTHORIZED TO SIGN LEASE EXTENSION BUT (A) HE DID NOT HAVE INTER-MINISTERIAL CONCURRENCE AS HE IMPLIED, OR HE FAILED TO CONSULT OR INFORM APPROPRIATE HIGHER AUTHORITIES, OR (B) HE DID HAVE HIGHER-LEVEL CONCURRENCE BUT, AFTER HE SIGNED EXTENSION, CABINET CONTINGENCY COMMITTEE DECIDED TO CANCEL CONFIDENTIAL

PAGE 04 STATE 049728

LEASE. IT IS OUR UNDERSTANDING THAT LEASE EXTENSION WAS UNDER CONSIDERATION BY THE GRZ FROM THE LAST WEEK IN OCTOBER, 1973 TO AT LEAST THE FIRST WEEK IN DECEMBER 1973, WHILE WOOD WAS IN LUSAKA. ALTHOUGH DATED OCTOBER 22 1973, THE EXTENSION WAS NOT DELIVERED TO WOOD UNTIL DECEMBER. WE WOULD ASSUME THAT GRZ WOULD HAVE CONSIDERED ITS TRUCK NEEDS BEFORE LEASE EXTENSION WAS DELIVERED TO TAW.

8. EMBASSY MIGHT ALSO BEAR IN MIND ONE FINAL ASPECT. AS DESCRIBED IN REF C, IN MARCH 1973, WOOD OBTAINED 60-DAY

NOTE FROM GRZ FOR DOLS 2.5 MILLION, INCLUDING DOLS 1.5 MILLION AS PREPAYMENT (OF FIRST AND LAST MONTHS RENT) ON LEASE. TAW THEN USED PROCEEDS OF NOTE TO COVER TAW-LIBERIA (NON-ZAMBIAN LEASE) OBLIGATIONS, AND DEPT. BELIEVES GRZ IS NOT AWARE OF THIS. IF ANY AGREED-UPON TAW/GRZ SETTLEMENT FALLS SHORT OF DOLS 2.5 MILLION, TAW MIGHT OWE BALANCE TO GRZ.

9. DEPT. AND OPIC REQUEST EMBASSY CONTINUE DISCRETE INQUIRY WHICH WOULD HELP CLARIFY AND SORT OUT POSSIBLE

EXPLANATIONS IN PARAS 5 AND 6, REASONS FOR LEASE

CANCELLATION, AND CIRCUMSTANCES SURROUNDING GRANTING OF

LEASE EXTENTION. ANY OTHER EMBASSY VIEWS ARE ALSO
WELCOME. KISSINGER

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